

MPEP §803 sets forth the criteria for any restriction requirement, providing that

There are two criteria for a proper requirement between patentably distinct inventions:

- (1) The inventions must be independent or distinct as claimed; and
- (2) There must be a serious burden on the examiner if restriction is not required.

In addressing the first requirement of §803, the Examiner asserts that the inventions encompassed by Groups I, II and III are *distinct* from each other (as opposed to *independent*).

Groups I and II:

The Examiner states that the inventions of Groups I and II are related as product and process of use. Referencing MPEP §806.05(h), the Examiner states that restriction is proper because the products (i.e., compositions/foods) of Group I can be used in a process other than that encompassed by the Group II claims (i.e., reducing blood cholesterol and controlling postprandial blood glucose and insulin levels). The Examiner specifically states that the compositions/foods can be used in a method of reducing weight. Applicants respectfully submit that there is no basis for the position that the compositions/foods of the Group I claims would, in and of themselves, be useful in reducing weight. Applicants therefore submit that in accordance with MPEP §806.05(h), the Examiner should withdraw the requirement with respect to Groups I and II. Furthermore, as to the second requirement of MPEP §803, there is no indication that a serious burden will be placed on the Examiner if restriction is not required.

As the Examiner has not satisfied the burden under either subsection (1) or (2) of MPEP §803, let alone both, Applicants respectfully request that the restriction requirement between Groups I and II be withdrawn and that the Group II claims be combined with the Group I claims.

Groups I and III; Groups II and III:

Applicants do not traverse the restrictions between Groups I and III and Groups II and III. (It follows that Applicants would not traverse a restriction between combined Groups I and II.)

Election of Species Requirement

Applicants elect to prosecute claims directed to polyol fatty acid polyesters (see page 7, line 2). Claims 1-28 are believed to read on the elected species.

Applicants respectfully traverse the election of species requirement. Contrary to the MPEP's instruction, the Examiner provides no basis for concluding that the non-digestible fats described in the specification are distinct. Rather, the Examiner simply states they are "patentably distinct", with no rationale for this conclusion. As the Examiner has not provided

the requisite basis for the election of species requirement, Applicants request withdrawal of the requirement.

CONCLUSION

Applicants have made elections with respect to the Examiner's restriction and election of species requirements. Both requirements are traversed.

Respectfully submitted for,

JEFFREY J. KESTER ET AL.

By Carl J. Roof
Carl J. Roof
Attorney for Applicants
Registration No. 37,708
Tel. No. (513) 634-5209

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